

Filed 3/28/19 In re Jamile R. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Jamile R. et al., Persons
Coming Under the Juvenile
Court Law.

B289417
(Los Angeles County
Super. Ct. No.
18CCJP01391)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

Jose R.,

Defendant and Appellant.

APPEAL from findings of the Superior Court of Los
Angeles County, Philip L. Soto, Judge. Affirmed.

Elizabeth C. Alexander, San Diego, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sarah Vesecky, Senior Deputy County Counsel, for Plaintiff and Respondent.

Jose R. (father) appeals the juvenile court's exertion of dependency jurisdiction over his two children. He argues that substantial evidence does not support the court's jurisdictional findings. We conclude that it does, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Father and Silvia A. (mother) have two children together—Jamilé (born 2013) and Aitana (born 2016). Mother has two other children with other men, one of whom—Maximiliano—lives with her and father.

Father and mother have a tumultuous relationship. Maximiliano reported seeing father and mother hitting one another, including witnessing one incident where father pushed mother in the stomach with an open fist. Jamilé reported seeing father hit mother twice, including once in the eye with a closed fist. Mother initially denied any physical contact between herself and father, but later admitted that the two have pushed each other “on several occasions.” Father also has a “problem with drinking” and, when he drinks, gets “aggressive.”

On Christmas day 2017, mother told father she wanted to end their relationship. In response, father put a BB gun in his mouth and threatened to pull the trigger in front of the children.

To dissuade mother from leaving him, father has also threatened to cut himself with a razor blade and to report mother to the immigration authorities. Father's efforts did not work, as mother eventually ended the relationship.

Father denies any domestic violence against mother, denies that he is anything but a social drinker, denies putting the BB gun in his mouth, and denies threatening to call immigration on mother. Despite mother's severance of their relationship, father still wants to get back together with her and mother fears father's threats would resume once the Department is no longer involved.

II. Procedural Background

In March 2018, the Los Angeles County Department of Children and Family Services (the Department) filed a petition asking the juvenile court to exert dependency jurisdiction over Jamile and Aitana¹ on the grounds that (1) the "history of . . . violent altercations" between mother and father "in the presence of the children" places the children "at risk of serious physical harm" (thereby rendering jurisdiction appropriate under Welfare and Institutions Code section 300, subdivisions (a) and (b)(1)),² (2) father's "mental and emotional problems, including suicidal ideation," place the children at "substantial risk . . . of serious physical harm" (thereby rendering jurisdiction appropriate under section 300, subdivision (b)(1)), and (3) father's "history of substance abuse" "renders [him] incapable of providing regular

¹ The petition also sought to exert jurisdiction over mother's other two children, but those rulings are not before us in this appeal dealing solely with *father's* children.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

care of the children,” placing the children at substantial risk of serious physical harm (thereby rendering jurisdiction appropriate under section 300, subdivision (b)(1)).

The juvenile court exerted jurisdiction over Jamile and Aitana based on the domestic violence between the parents under both subdivisions (a) and (b) of section 300. The court placed the children in the home of mother and ordered family preservation services for mother, and removed the children from father and ordered enhancement services for him. The court set the matter for a further hearing under section 364.

Father filed this timely appeal.

Thereafter, in October 2018, the juvenile court terminated jurisdiction over the children and awarded mother sole physical and legal custody of Jamile and Aitana, with father to have monitored visitation.³

DISCUSSION

Father challenges the juvenile court’s jurisdictional findings under subdivisions (a) and (b) of section 300. In evaluating this claim, we ask only whether there is substantial evidence to support those findings. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161-1162.) In so doing, we view the evidence in the light most favorable to the juvenile court’s findings, drawing all inferences in favor of those findings, and disregard all contrary evidence. (*Id.*; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

Among other grounds, a juvenile court may exert dependency jurisdiction over a child if (1) “[t]he child has

³ We elect to reach the merits of father’s challenge because it underlies the exit order altering his custody of the children. (*In re A.R.* (2009) 170 Cal.4th 733, 739-744.)

suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent” (§ 300, subd. (a)), or (2) “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child” (§ 300, subd. (b)(1)). Exposing a child to domestic violence can risk the nonaccidental infliction of serious physical injury under subdivision (a) of section 300 (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599 (*Giovanni F.*)), and can constitute a failure to protect a child from the risk of such injury under subdivision (b) (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194). Jurisdiction is appropriate under either provision if (1) the violence places the child in harm’s way, and (2) “there is evidence that the violence is ongoing or likely to continue.” (*Giovanni F.*, at pp. 598-599; *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 (*Daisy H.*); *In re Jonathan B.* (2015) 235 Cal.App.4th 115, 120-121.)

Substantial evidence supports the juvenile court’s jurisdictional findings under subdivisions (a) and (b) of section 300. Maximiliano and Jamile reported seeing father hit mother on more than one occasion, and mother eventually admitted that father would shove her. This violence also put the children in harm’s way because their reports of witnessing the violence means they were present for it. And father’s continued interest in reconciling with mother despite her repeated protests that their relationship is over makes their continued interaction—and the violence that accompanies that interaction—likely to continue.

Father resists this conclusion on three grounds.

First, he argues that subdivision (a) requires proof that a child has already been injured in the cross-fire of the parents' domestic violence. We independently interpret the meaning of subdivision (a). (*John v. Superior Court* (2016) 63 Cal.4th 91, 95.) Nothing in the plain language of subdivision (a) requires a juvenile court to wait until a child has been physically injured before stepping in. To be sure, the statute states, “[f]or purposes of this subdivision, a court *may* find there is a substantial risk of serious future injury based on [(1)] the manner in which a less serious injury was inflicted, [(2)] a history of repeated inflictions of injuries on the child or the child’s siblings, or [(3)] a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm.” (§ 300, subd. (a), italics added.) This is a list of possible ways to establish risk; it does not purport to be exhaustive. Not surprisingly, courts have repeatedly and consistently rejected the notion that section 300, subdivision (a) only applies if a child was previously harmed. (*Giovanni F.*, *supra*, 184 Cal.App.4th at pp. 598-599; *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383 [“the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child”]; *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993 [same].) This makes sense because a contrary construction of subdivision (a) would give a parent an automatic “pass” for a child’s first injury, a result wholly at odds with our Legislature’s stated purpose for the dependency laws—namely, “to provide maximum safety and protection for children.” (§ 300.2.)

Second, father argues that the evidence does not support a finding that he engaged in domestic violence with mother because he (and *his* mother) denied any physical violence at all, mother’s

child who only occasionally came to visit never witnessed any violence, mother denied all but shoving, and Maximiliano was “not able to elaborate” on the one incident of violence he witnessed. At best, some of this evidence conflicts with Jamile and Maximiliano’s first-hand accounts of witnessing domestic violence. Because we view the evidence in the light most favorable to the court’s findings and reject contrary evidence, father’s ability to cite contrary evidence does not undermine the court’s jurisdictional finding regarding domestic violence. Father’s related argument that there was not any cognizable domestic violence because “nothing done was directed to the children” is also unavailing, as “[d]omestic violence impacts children even if they are not the ones being physically abused.” (*In re T.V.* (2013) 217 Cal.App.4th 126, 134.)

Lastly, father argues that any risk to the children evaporated by the time of the jurisdictional hearing because he had already moved out of the family home. (*In re M.M.* (2015) 240 Cal.App.4th 703, 719 [looking to whether ““the circumstances at the time of the [jurisdictional] hearing subject the minor to the defined risk of harm””].) For support, he cites *In re J.N.* (2010) 181 Cal.App.4th 1010 (*J.N.*) and *Daisy H.*, *supra*, 192 Cal.App.4th 713. As explained above, father may have moved out, but his “access” to the home where mother lives, his fixation on mother, and his refusal to acknowledge that his relationship is over creates a likelihood of continued interaction, continued violence and hence continued risk to the children put in harm’s way by that violence. That risk is amplified by father’s failure to acknowledge his behavior—and hence the dangers caused by his behavior. (E.g., *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 [“One cannot correct a problem one fails to

acknowledge.”].) The cases father cites are inapt: *Daisy H.* involved a single incident of violence occurring years before when the children were not present (*Daisy H.*, at pp. 715-717), and *J.N.* involved a single, isolated and out-of-character incident of drunk driving with the children in the car (*J.N.*, at pp. 1014, 1025-1026).

In light of our conclusion that the juvenile court’s jurisdictional findings are supported by substantial evidence, we have no occasion to reach the Department’s alternative grounds for affirmance.

DISPOSITION

The findings are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ